

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ADELPHIA GATEWAY, LLC,
Plaintiff

v.

TEMPORARY EASEMENT FOR 0.065
ACRES IN CITY OF CHESTER,
DELAWARE COUNTY, PENNSYLVANIA,
TAX PARCEL NUMBER 49-10-00968-00,
124 TOWNSEND STREET, CHESTER,
PA 19013 *et al.*,
Defendants

CIVIL ACTION

No. 20-969

ORDER

AND NOW, this 22nd day of April, 2020, upon consideration of Adelphia Gateway, LLC's Motion for Partial Summary Judgment (Doc. No. 5) and Motion for Preliminary Injunction (Doc. No. 6), it is **ORDERED**, for the reasons set forth in the accompanying Memorandum, that:

1. The Motion for Partial Summary Judgment (Doc. No. 5) is **GRANTED**. Adelphia has the substantive right to condemn:
 - a. On Tax Parcel Number 49-10-00968-00, a temporary easement of 0.065 acres for use during the course of construction and restoration of the pipeline and facilities, as described in the drawing attached as Exhibit A-1 to the Verified Complaint, for the purpose of construction and restoration, including but not limited to the right to enter on, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and sedimentation controls, and any other construction activity necessary to construct the pipeline and facilities as required by the Order of the Federal

Energy Regulatory Commission dated December 20, 2019, Docket No. CP18-46-000, 169 FERC ¶ 61,220 (2019);

- b. On Tax Parcel Number 49-10-00969-00, a temporary easement of 0.041 acres for use during the course of construction and restoration of the pipeline and facilities, as described in the drawing attached as Exhibit A-2 to the Verified Complaint, for the purpose of construction and restoration, including but not limited to the right to enter on, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and sedimentation controls, and any other construction activity necessary to construct the pipeline and facilities as required by the Order of the Federal Energy Regulatory Commission dated December 20, 2019, Docket No. CP18-46-000, 169 FERC ¶ 61,220 (2019);
- c. On Tax Parcel Number 49-11-00116-00, a temporary easement of 0.028 acres for use during the course of construction and restoration of the pipeline and facilities, as described in the drawing attached as Exhibit A-3 to the Verified Complaint, for the purpose of construction and restoration, including but not limited to the right to enter on, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and sedimentation controls, and any other construction activity necessary to construct the pipeline and facilities as required by the Order of the Federal Energy Regulatory Commission dated December 20, 2019, Docket No. CP18-46-000, 169 FERC ¶ 61,220 (2019);

- d. On Tax Parcel Number 49-10-00967-00, a temporary easement of 0.069 acres for use during the course of construction and restoration of the pipeline and facilities, as described in the drawing attached as Exhibit A-4 to the Verified Complaint, for the purpose of construction and restoration, including but not limited to the right to enter on, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and sedimentation controls, and any other construction activity necessary to construct the pipeline and facilities as required by the Order of the Federal Energy Regulatory Commission dated December 20, 2019, Docket No. CP18-46-000, 169 FERC ¶ 61,220 (2019);
- e. On Tax Parcel Number 49-11-00147-00, a temporary easement of 0.119 acres for use during the course of construction and restoration of the pipeline and facilities, as described in the drawing attached as Exhibit A-5 to the Verified Complaint, for the purpose of construction and restoration, including but not limited to the right to enter on, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and sedimentation controls, and any other construction activity necessary to construct the pipeline and facilities as required by the Order of the Federal Energy Regulatory Commission dated December 20, 2019, Docket No. CP18-46-000, 169 FERC ¶ 61,220 (2019);
- f. On Tax Parcel Number 49-10-00966-00, a temporary easement of 0.047 acres for use during the course of construction and restoration of the pipeline and facilities, as described in the drawing attached as Exhibit A-6 to the Verified

Complaint, for the purpose of construction and restoration, including but not limited to the right to enter on, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and sedimentation controls, and any other construction activity necessary to construct the pipeline and facilities as required by the Order of the Federal Energy Regulatory Commission dated December 20, 2019, Docket No. CP18-46-000, 169 FERC ¶ 61,220 (2019);

- g. On Tax Parcel Number 49-10-00951-00, a temporary easement of 0.096 acres for use during the course of construction and restoration of the pipeline and facilities, as described in the drawing attached as Exhibit A-7 to the Verified Complaint, for the purpose of construction and restoration, including but not limited to the right to enter on, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and sedimentation controls, and any other construction activity necessary to construct the pipeline and facilities as required by the Order of the Federal Energy Regulatory Commission dated December 20, 2019, Docket No. CP18-46-000, 169 FERC ¶ 61,220 (2019); and
- h. On Tax Parcel Number 49-10-01025-00, a temporary easement of 0.01 acres for use during the course of construction and restoration of the pipeline and facilities, as described in the drawing attached as Exhibit A-8 to the Verified Complaint, for the purpose of construction and restoration, including but not limited to the right to enter on, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and

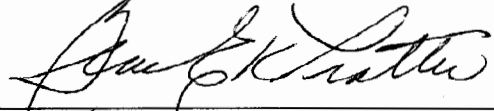
sedimentation controls, and any other construction activity necessary to construct the pipeline and facilities as required by the Order of the Federal Energy Regulatory Commission dated December 20, 2019, Docket No. CP18-46-000, 169 FERC ¶ 61,220 (2019).

2. The Motion for Preliminary Injunction (Doc. No. 6) is **GRANTED**.

- a. Upon filing the bond required below, Adelphia is granted access to, possession of, and entry to the Rights-of-Way referenced in paragraphs 1(a)–1(h) of this Order for all purposes allowed under the Order of the Federal Energy Regulatory Commission dated December 20, 2019, Docket No. CP18-46-000, 169 FERC ¶ 61,220 (2019), including construction and restoration purposes not limited to the right to enter on, clear off (including the removal of all trees and vegetation), grade, install temporary fencing, berms, and erosion and sedimentation controls, and any other construction activity necessary to construct the pipeline and facilities.
- b. In the event of a violation of this Order by Defendants, such as interference with Adelphia's possession of the Rights of Way by Defendants or by third parties who are authorized by Defendants to be on the Property, the U.S. Marshal Service, or a law enforcement agency it designates, shall be authorized to investigate and to arrest, confine in prison and/or bring before the Court any persons found to be in violation of this Order and in contempt of this Order, pending their compliance with the Court's Order.

- c. Adelphia shall post a bond in the amount of \$7,800.00 as security for the payment of just compensation to Defendants;¹ and
- d. Adelphia shall record this Order in the Office of the Recorder of Deeds for Chester County, Pennsylvania.

BY THE COURT:



GENE E.K. PRATTER

UNITED STATES DISTRICT JUDGE

¹ Federal Rule of Civil Procedure 65(c) instructs that “[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” “The amount of the bond is left to the district court’s discretion.” *Howmedica Osteonics v. Zimmer Inc.*, 461 F. App’x 192, 198 (3d Cir. 2012) (citing *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010)). When setting the bond amount, “[d]istrict courts tend to err on the ‘high side’ considering that ‘the only recourse against wrongful enjoinderment is against the bond.’” *UGI Sunbury LLC v. A Permanent Easement for 2.4645 Acres*, No. 16-00784, 2016 WL 4089077, at *5 (M.D. Pa. Aug. 2, 2016) (quoting *Arlington Indus., Inc. v. Bridgeport Fittings, Inc.*, No. 06-1105, 2011 WL 4916397, at *4 (M.D. Pa. Oct. 17, 2011)).

The total appraised value of the rights-of-way in this individual case is \$2,600. Adelphia has proposed setting the bond at \$7,800. This amount being three times the appraised value, the Court concludes that the “conservative solution” is to set the bond at Adelphia’s proposed \$7,800. *In re Algonquin Nat. Gas Pipeline Eminentdomaincases*, No. 15-5076, 2015 WL 10793423, at *12 (S.D.N.Y. Sept. 18, 2015). This “will more than protect the non-settling owners against costs and damages they might incur as a result of premature entry by [Adelphia] onto their justly-condemned property.” *Id.*